

**SACRAMENTO COUNTY WATER AGENCY  
CALIFORNIA**

For the Agenda of:  
October 21, 2008  
Timed: 2:15 p.m.

To: Board of Supervisors  
Board of Directors, Sacramento County Water Agency

From: Department of Water Resources

Subject: Adopt Resolutions Approving The Sacramento County And Sacramento County Water Agency Policies With Respect To Bay-Delta Activities Including The Delta Vision And The Bay-Delta Conservation Plan

Supervisory  
District(s): Nottoli

Contact: Keith DeVore, Director, 874-8651

**Overview**

Staff is asking both Boards to approve policies in response to the Delta Vision, Strategic Plan, and Bay-Delta Conservation Plan (BDCP) recommendations and proposals. These plans collectively propose the formation of an overarching appointed governmental structure to implement the stated co-equal goals of providing a reliable water supply for California while sustaining a healthy San Francisco Bay/Sacramento-San Joaquin Delta (Delta) ecosystem. The plan recommendations also include constructing large channels to convey water south and creating vast wetlands from agricultural farmlands. As currently proposed, these recommendations will have adverse financial impacts and result in the diminution of the Board's governance authority. They will also create the potential for: (1) the loss of water rights, (2) unmitigated environmental impacts, and (3) adverse effects on the operations of the Sacramento Regional County Sanitation District (SRCSD) and the Freeport Regional Water Project (FRWP).

**Recommendations**

1. The Board of Supervisors adopt the attached County of Sacramento Resolution approving Sacramento County policies with respect to Bay-Delta activities including the Delta Vision and the Bay-Delta Conservation Plan; and
2. The Sacramento County Water Agency (SCWA) Board of Directors adopt the attached SCWA Resolution approving the Sacramento County policies with respect to Bay-Delta activities including the Delta Vision and the BDCP.

**Measures/Evaluation**

Not applicable to this agenda item.

**Fiscal Impact**

The potential fiscal impact is incalculable at this time, but land use policies, improvement plans, and changes to water rights which may result from current proposals will adversely affect the economic development in the impact areas of the Delta and the County generally. This request is consistent with applicable elements of the 11-Point Budget Plan.

## **BACKGROUND**

The Delta is a massive estuary at the confluence of the Sacramento and San Joaquin rivers. Numerous islands exist in the Delta, which have been rich agricultural lands since the conversion to irrigated agriculture that occurred at the conclusion of the California gold rush. These islands and waterways provide habitat for many species of plants and animals, including several listed as either threatened or endangered under the state and federal endangered species acts.

The Delta is the source of irrigation water for approximately seven million acres of agricultural land and a source of municipal and industrial water supply for two-thirds of California's residents. The Delta is the key conveyance point for California's two largest water projects, the Central Valley Project (CVP) and the State Water Project (SWP). The CVP and SWP operate massive pumps that transport water from the Delta to Central and Southern California.

For decades the Delta has been in decline. Delta water quality is getting poorer. Delta islands are subsiding faster than any place on earth. Several fish species have experienced recent and dramatic population declines. Delta levees are deteriorating and have failed during storm events over the past few years.

These conditions have prompted contentious battles in administrative, legislative and judicial proceedings. Conflicts have arisen between water users within the Delta and those who use water exported from the Delta. Environmentalists have sued water users, including the state and federal governments. Some of the most protracted conflicts have occurred in the context of the administrative proceedings (and subsequent litigation) for the Delta water quality control plan, which is essentially the water quality framework established pursuant to the federal Clean Water Act and California's Port-Cologne Act. In fact, the Delta water quality control plan has been the source of active and unabated administrative or judicial proceedings since the mid-1970s.

Governor Schwarzenegger created the Delta Task Force by executive order in September 2006 and charged it with developing "a durable vision for sustainable management for the Delta." His executive order recognized that "a concerted, coordinated and creative response from leaders at all levels of government, stakeholders, academia and affected communities" will be necessary to increase the Delta's sustainability.

In December 2007, the Delta Task Force released its final Delta Vision, setting forth 12 integrated and linked recommendations for long-term management and suggesting several near-term actions to address immediate needs. The Delta Vision rested on the premise that "[t]he Delta is critically important to California but cannot be sustained as we know and use it today." The 12 recommendations encompassed conveyance (preferring a dual conveyance solution) but were meant to address comprehensively the "[w]ater, land use, environmental and institutional elements necessary to a desirable solution."

On June 18, 2008, the Delta Vision Blue Ribbon Task Force (Delta Task Force) released a preliminary staff draft of the "Delta Vision Strategic Plan" (Draft Strategic Plan/Strategic Plan). Once finalized, the Strategic Plan will be the first planning document produced by the Delta Task Force. Although very much a rough draft "not for attribution," as the running header states, the

Draft Strategic Plan provides an interesting look at the solutions and approaches being considered by the Delta Task Force. At its heart are the co-equal goals of the Delta Vision – the San Francisco Bay/Sacramento-San Joaquin Delta (Delta) ecosystem and a reliable water supply – and it outlines a number of dramatic shifts in California’s approach to the Delta that are necessary to achieve these goals.

Current investigations and studies with respect to the Delta have made clear that there is no one cause of the Delta’s decline. Numerous probable causes for that decline have been identified including the impact of the export pumps, the introduction of invasive species into Delta waterways, the impact of unscreened Delta diversions and the introduction into Delta waters of industrial and other contaminants. In addition, ocean conditions have also contributed to the decline of Delta species. As the Delta Vision and other processes proceed to work on solutions to identified problems in the Delta, actions and activities must recognize the multiple factors that are in play and not assume that the Delta’s problems can be properly addressed without addressing all of the causes of this decline.

### **Draft Strategic Plan**

The Delta Task Force’s next step is to draft a strategic implementation plan by October 31, 2008. The Draft Strategic Plan builds on the Delta Vision’s 12 recommendations, but highlights two assumptions it calls “especially central”:

1. The Delta ecosystem and a reliable water supply for California are the primary, co-equal goals for sustainable management of the Delta.
2. The California Delta is a unique and valuable area, warranting recognition and special legal status from the State of California.

The Delta Task Force sets forth two “fundamental” conclusions at the outset of the Draft Strategic Plan. The first is that California must “greatly improve” both its decision-making abilities and its capacity to implement decisions concerning the Delta ecosystem and water reliability. The second is that even if a revitalized ecosystem and sustainable water supply are achieved, they will not guarantee a return to “water export levels of the recent past or survival of any individual species.” The Draft Strategic Plan examines cost estimates from a number of sources and concludes that the total capital expenditure for the Delta in the next 15 years, including the cost of an alternative conveyance and Delta improvements, could range from \$12 to \$24 billion and go as high as \$80 billion.

The Draft Strategic Plan is comprised of four sections: (1) Governance and Finance, (2) Ecosystem, (3) Water Supply Reliability, and (4) The Delta as a Place. Each section addresses goals, potential metrics, and implementation strategies.

### **Governance and Finance**

Goals identified in the Draft Strategic Plan include creating “clear lines of governmental responsibility for protecting” the Delta, harmonizing the work and roles of existing agencies, and obtaining financing. These may be measured by the successes and failures of the other sections

of the Draft Strategic Plan. A “multi-part governance structure” is recommended, including: “a California Delta Ecosystem and Water Council, a strengthened Delta Protection Commission, a Delta Conservancy, and a Delta Science and Engineering Board.” The new Council would develop and implement a binding California Delta Ecosystem and Water Plan.

### **Ecosystem**

Ecosystem goals include supporting viable populations of Delta species, creating migration corridors, and reducing ecosystem stressors. Measurements may include the acreage and connectivity of certain habitats and the abundance and distribution of various species. This is to be accomplished by restoring habitats and ecosystem processes, monitoring wildlife, and controlling stressors.

### **Water Supply Reliability**

The goals in this section are to improve reliability; to enhance supply, quality and flexibility of water resources; to balance water supply and ecosystem; and to prepare for climate change. Measurements are to include water use, adequacy of emergency reserves, concentrations of contaminants in Delta water, and other factors. The strategies for achieving these goals include improving data collection, increasing urban and agricultural water-use efficiency, requiring developers to incorporate water-savings devices and mitigation measures, increasing locally generated water supplies, encouraging use of recycled water, improving the legal and regulatory framework for transfers and storage, and exploring dual-conveyance options.

### **The Delta as a Place**

Finally, these goals include enhancing tourism and recreation, decreasing the risk of flood damage, and harmonizing state and local priorities. They may be measured in part by flood risk and the acreage of desirable land uses. The Draft Strategic Plan discusses the possibility of creating a National Heritage Area and State Recreation Area and enhancing “gateway” locations in order to draw attention to the Delta, taking flood-prevention steps, revitalizing the levee system, and creating emergency plans.

### **DISCUSSION**

Agencies that provide water supplies to areas south of the Delta, along with various state and federal agencies and other stakeholders, are in the process of developing a habitat conservation plan (HCP), or the BDCP, for the Delta that will address species that are listed as threatened or endangered under the state and federal endangered species acts.

The State Water Resources Control Board (SWRCB) intends to review both water rights and water quality issues associated with the Delta.

The Legislature, encouraged by the Governor and Senator Diane Feinstein, has pursued bond legislation that would finance infrastructure that will be necessary to address water supply problems within the State, as well as Delta ecosystem improvements.

All of these various processes overlap with improved conveyance of water through and/or around the Delta and Delta ecosystem with restoration and enhancement the key focus.

Significant portions of Sacramento County are within the Delta; and therefore, the County's interests are directly implicated in all of these processes. In addressing environmental problems and concerns in the Delta and in addressing the need to more efficiently convey water to areas south of the Delta, the potential exists to directly and adversely affect areas of Sacramento County that lie both within and outside of the Delta.

While Sacramento County is and has been willing to constructively participate in all of the processes noted above, it should be guided by the following policies and principles:

1. No Redirected Adverse Impacts. The Delta Vision's twelve integrated recommendations have been developed around what it terms the co-equal goals of the Delta ecosystem and a reliable water supply for California. These co-equal goals, in the context of their practical application, ignore the reality that the adverse impacts of diversions in the Delta are primarily a result of water exports and that water supply issues above the Delta are quite different from those that are presented in areas of the State that are south of the Delta. While addressing the Delta ecosystem and providing a reliable water supply for those south of the Delta are important, actions and activities associated with the Delta should not be undertaken at the expense of those upstream of the Delta.

As a consequence, Sacramento County can only support actions associated with the Delta ecosystem and water supply reliability for areas south of the Delta that do not result in significant adverse environmental, economic, or social impacts to counties or the watersheds of origin of Delta waters, including Sacramento County.

2. Water Rights and Area-of-Origin Protections. The major resource focus of the Delta Vision and BDCP is water. Water is needed for the Delta ecosystem and for export south of the Delta. The proposed peripheral canal is championed based upon its ability to isolate the SWP and CVP pumps from the Delta ecosystem, as well as its ability to more efficiently convey water to areas south of the Delta. The Delta Vision advocates the reallocation of water to these purposes, notwithstanding priority of water rights or the promises of area-of-origin protections that were a predicate for the authorization of the SWP and CVP and the grant of water rights to those projects. The Delta Vision does so based upon a series of legal opinions related to the public trust doctrine and the reasonable use doctrine. Neither of these doctrines, however, needs to be applied, as has been suggested in the Delta Vision.

Sacramento County will not support any action or activity that ignores water rights priorities and the protections afforded counties and areas of origin. A bedrock policy principle that will guide actions with respect to the Delta is that in undertaking actions and activities associated with the Delta protections, county and area-of-origin assurances and protections, as well as water rights priorities, must be honored. Sacramento County believes that water solutions like those encompassed in the agreement reached among water rights holders in the Sacramento Valley, the negotiated agreement on the Yuba

River, the Sacramento Water Forum Agreement, and the free market transfer of water all present better models than does the adversarial reallocation of water advocated by the Delta Vision.

Sacramento County also opposes water user fees that seek to tax water users within the areas of origin to mitigate for environmental harm caused by those south of the Delta or to pay for the costs of conveyance or increased water supply for those south of the Delta.

3. The Peripheral Canal. All of the various processes related to the Delta at some level appear to recommend a peripheral canal to isolate the Delta from the adverse effects of the SWP and CVP pumps. This may be an appropriate solution for the problems that plague the Delta. However, this facility, particularly its proposed eastern alignment, raises major significant and unique issues and concerns for Sacramento County. A copy of these different conveyance alternatives is included as Attachment 1. These include the concerns addressed in Policies 1 and 2 above, but also include the following:
  - A. Discharges from the SRCSD facility have been a major “target” of the Delta Vision and the BDCP. This facility should be treated no differently from any other publicly owned treatment works (POTW), and conclusions with respect to its operation should be guided by good science and not by unfounded assumptions or bad information. To the extent that there is a desire to treat discharged water from this facility to a higher degree than would otherwise be required, then costs associated with this extra treatment (capital and operation and maintenance (O&M) costs) should be borne by the State or those who directly benefit from this higher treatment.
  - B. The relative location of the SRCSD facility and FRWP to the intake for an eastern route of a peripheral canal creates the potential for operational conflicts. The peripheral canal should be designed and constructed so that it does not adversely affect the existing or future operation of SRCSD or FRWP facilities, and any increased O&M costs caused by the peripheral canal to SRCSD or FRWP facilities must be borne by the State or those who directly benefit from the peripheral canal.
  - C. An eastern alignment for the peripheral canal will run through Sacramento County. This will have land use and other significant effects on the County. Sacramento County and other local governments must be involved in routing decisions. Full compensation to the County, other local governments, and affected landowners must be made a part of any implementation plan. This includes impacts to habitat, roads, and other infrastructure as well as appropriate mitigation for direct and indirect economic impacts.
4. The actions associated with the Delta have the potential of affecting local County prerogatives, including local land use authority, tax revenues, public health and safety, economic development, and agricultural stability.

- A. Local Land Use. The Delta Vision seeks to create a new governance system for the Delta that, at best, marginalizes the traditional role of the County. In its place, Delta Vision recommends the establishment of an appointed governing council. Traditional elected representative governance should not be supplanted by an appointed body; and land use decisions should remain local, even if they are shaped by State-wide concerns.
  - B. Tax, Assessment and Fee Revenues. All of these areas of critical importance will be affected by changing land use patterns in the Delta.
  - C. Public Health and Safety. Public health and safety are primary responsibilities of the County. All proposed activities in the Delta need to be evaluated with respect to their effect on the County's ability to meet its obligations in this regard.
  - D. Economic Development/Agricultural Stability. Existing economic development, including agriculture in the Delta, is of great importance to the County. The County needs to protect the Delta economic sector from interference from out-of-County interests.
5. Related to the above, the Delta Vision and, to a degree, BDCP would supplant local elected governance through the operation of councils, boards, and commissions. A copy of this proposed Governance Structure is included as Attachment 2. To the extent they are established, these councils, boards, and commissions must include voting membership of locally elected representatives, and these locally elected officials must constitute a majority on these regional bodies.
  6. The BDCP consists of interests and stakeholders that are, more or less, limited to south of Delta water export interests or state and federal agencies. This planning effort should not proceed without the participation of directly affected local agencies. Sacramento County will oppose BDCP actions or activities that conflict with the South County HCP. Sacramento County, however, is willing to work with the BDCP to minimize conflict and to maximize mutual interests.
  7. The actions and activities associated with the Delta will include significant expenditures and a great deal of new infrastructure. Adequate dollars need to be allocated and expended to protect and enhance transportation corridors within affected areas of Sacramento County and to maintain and enhance, as appropriate, levees and other means of flood control within Sacramento County. This includes the construction and maintenance of levees that may exist or may need to be constructed to protect legacy communities that may otherwise be stranded if and when water conveyance through the Delta is abandoned in favor of alternative conveyance facilities. The expenditures must also include the cost of improved emergency response within the Delta to expand upon flood protection, particularly for levees downstream of the peripheral canal diversion point.

8. Any solution to the problems being addressed in the Delta must account for the multiple causes of the Delta's decline and not simply focus on one or even a limited number of them. This may make the task of Delta restoration more difficult and costly than more limited actions and activities, but not addressing the multiple stressors affecting the Delta will limit the effectiveness of truly addressing the problem and will place an undue focus burden on less significant problems while ignoring the true causes of the Delta's decline.

### **FINANCIAL ANALYSIS**

The potential fiscal impact is incalculable at this time. The current proposals contain governance proposals, through-Delta conveyance options, and mitigation measures that impact land use policies, levees, improvement plans, and County, SCWA, and SRCSD planning that may affect the economic development or result in unfunded state mandates in the impact areas of the Delta.

Respectfully submitted,

APPROVED:

TERRY SCHUTTEN  
County Executive

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KEITH DEVORE, Director  
Department of Water Resources

By: \_\_\_\_\_  
PAUL J. HAHN, Administrator  
Municipal Services Agency

Attachments: Resolution – Sacramento County Policies  
Resolution – Sacramento County Water Agency Policies  
Attachment 1 – Delta Canal Options  
Attachment 2 – First Staff Draft Governance Structure

cc: Robert Ryan, County Counsel  
Robert Sherry, Planning  
John Woodling, Regional Water Authority